

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

AUG 12 2009

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

KENNETH W. NUNLEY,
Plaintiff

VS.

CITY OF WACO,
Defendant

§
§
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§
§
§
§

NO.

W09CA197

PLAINTIFF'S ORIGINAL COMPLAINT

KENNETH W. NUNLEY, Plaintiff, complains of CITY OF WACO, Defendant, and would show the Court and jury as follows:

I.

JURISDICTION

1. The jurisdiction of this court is invoked regarding the following causes of action or statutes:

2. *Title VII. Race Discrimination*, 42 USC § 2000e et seq, hereinafter "Title VII". At all times relevant hereto, Plaintiff was an employee as defined in said act and Defendant was an employer as defined in said act. Defendant had the requisite number of employees required by said act. Defendant violated said law as hereinafter described.

3. § 1981. *Race Discrimination*, 42 USC § 1981 (as amended in 1991 by P.L. 102-166 § 101, 105 Stat. 1071), hereinafter "Sec. 1981". § 1983. *Civil Action for Deprivation of Rights*, 42 USC § 1983, as amended. Plaintiff is an individual of the Black race, sometimes also known as the "African-American" race, who is a citizen of the United States of America and his rights under the

law have been impaired by Defendant based on his race, as hereinafter set forth.

II.

PARTIES

4. Plaintiff is an adult citizen of Texas. Defendant is a municipality located in McLennan County, Texas, with whom Plaintiff has been employed from May, 1994 until the present.

III.

VENUE

5. This cause of action, or a substantial portion thereof, occurred in McLennan County, Texas.

IV.

FACTS

6. Plaintiff's race is Black (also sometimes referred to as "African-American"). Plaintiff has been employed by Defendant from May, 1994 until the present in the Parks and Recreation Department of the Defendant.

7. In 2001, during a reorganization in the Parks and Recreation Department, Plaintiff was demoted from his field supervisor position to equipment operator. Other White (Caucasian) field supervisors were not similarly demoted but moved to operation coordinator positions.

8. In 2004, Plaintiff applied for an operations coordinator position, for which he was qualified; however, a White employee, who was less qualified than Plaintiff, was promoted into the position.

9. In November, 2006, the same position of operations coordinator in the Parks and Recreation Department opened up again when the previous employee left.

10. Plaintiff applied for the operations coordinator position along with several other individuals.

11. Again, Plaintiff was not hired for the position and the Defendant hired a White individual, who had not previously worked for the Defendant.

12. Plaintiff was clearly better qualified for the position than the White individual who was hired on or about February 5, 2007.

13. Thereafter, Plaintiff filed a complaint with the Equal Employment Opportunity Commission (EEOC) within the time allowed by applicable law alleging race discrimination.

14. After investigating the complaint, the EEOC issued a determination that reasonable cause existed to believe that the Defendant violated Title VII of the Civil Rights Act of 1964 in regards to Plaintiff being denied the Operations Coordinator position for the Parks and Recreation Department on several occasions, with the last time being when he applied in November, 2006, and the position being filled on February 5, 2007.

15. The EEOC issued Plaintiff a right to sue and this suit was filed.

V.

CAUSES OF ACTION

16. Plaintiff alleges that his race was a motivating factor for Defendant's actions as described above; said acts or omissions being in violation of *Title VII*, which provides that it is an unlawful employment practice to discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of race.

17. As stated above, Plaintiff belongs to the identifiable group of United States citizens known as the Black or African-American race. The Defendant intended to discriminate against

Plaintiff because of his race. Defendant's discrimination abridged a term, condition, or privilege of his employment agreement with Defendant resulting in Plaintiff not being promoted to the Operations Coordinator position in violation of 42 USC § 1981.

18. Plaintiff brings this 42 USC § 1981 action against Defendant by way of 42 USC § 1983. Plaintiff alleges that at all times relevant to this cause of action, Defendant engaged in a custom, policy, or practice involving race, in the Parks and Recreation Department, which resulted in the failure and/or refusal of Defendant, on more than one occasion (including the last occasion in February, 2007), to promote Plaintiff to the Operations Coordinator.

19. Also, Plaintiff alleges that as a result of his complaints to the Defendant and/or the EEOC, Defendant retaliated against Plaintiff by refusing to promote him to higher positions in the Parks and Recreation Department, which retaliation is in violation of Title VII and/or 42 USC § 1981.

20. Plaintiff alleges that the above described actions or omissions resulted in damages as hereinafter set forth.

VI.

DAMAGES

21. Defendant's action in discriminating against Plaintiff has resulted in Plaintiff losing pay and benefits of employment, which he would have received had he been promoted to the Operations Coordinator position. Plaintiff has suffered past and future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

VII.

EXHAUSTION OF ADMINISTRATIVE PREREQUISITES

22. Plaintiff has satisfied all prerequisites to the bringing of this suit, including exhausting all required administrative remedies. As described above, Plaintiff timely filed a complaint against Defendant with the EEOC, as required by the above referred to statute, and allowed said Commission to investigate the complaint prior to filing this suit. Plaintiff received a right to sue letter dated May 28, 2009 from the EEOC . Plaintiff received the letter a few days after May 28, 2009 and has filed this suit within 90 days of receiving said letter. Other than the right to sue letter dated May 28, 2009, Plaintiff has never received any other right to sue letter from the EEOC. There is no administrative exhaustion requirement regarding the cause of action under 42 USC § 1981.

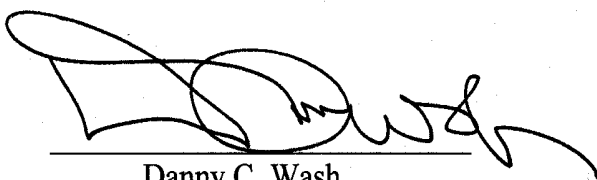
VIII.

ATTORNEY/EXPERT WITNESS FEES

23. Plaintiff had to employ an attorney to vindicate his rights under the law, and seeks reasonable and necessary attorneys' fees and expert witness fees.

PRAYER

WHEREFORE, Plaintiff requests that on final hearing Plaintiff be awarded damages as stated above, costs of court, and such other relief as Plaintiff may be justly entitled.



Danny C. Wash
State Bar No. 20896000
WASH & THOMAS
Attorneys at Law
6613 Sanger Ave.
Waco, Texas 76710
(254) 776-3611
(254) 776-9217 - Fax Number
Email- danwash@washthomas.com
Attorney for Plaintiff

PLAINTIFF HEREBY RESPECTFULLY DEMANDS A TRIAL BY JURY

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

W09CA197

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Kenneth W. Nunley

(b) County of Residence of First Listed Plaintiff McLennan
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Danny C. Wash, Wash & Thomas
6613 Sanger Ave., Waco, TX 76707 254-776-3611

DEFENDANTS

City of Waco

County of Residence of First Listed Defendant McLennan
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title VII and 42 USC 1981

Brief description of cause:
race discrimination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

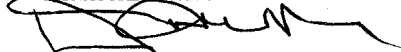
JUDGE

DOCKET NUMBER

DATE

08/12/2009

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INTAKE COPY

FILING FEE RECEIPT COPY

DUPLICATE

Court Name: TEXAS WESTERN
Division: 6
Receipt Number: 600002087
Cashier ID: smiles
Transaction Date: 08/12/2009
Payer Name: WASH AND THOMAS

CIVIL FILING FEE

For: KENNETH W. NUNLEY
Amount: \$350.00

CHECK

Check/Money Order Num: 15937
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

CIVIL CASE FILING FEE. KENNETH W.
NUNLEY VS CITY OF WACO.
6:09-CV-197. CHECK PAID BY WASH &
THOMAS